I do not accept the contention of the taxpayer that the Board of Review gave inadequate consideration to the evidence adduced by him and the documents. Pursuant to the provisions of section 80(5)(d) the Board of Review admitted hearsay and secondary evidence but, not surprisingly, considered it of little value. It is quite inaccurate to say that having admitted it the Board rejected it because of its hearsay character.

It was urged on behalf of the taxpayer, as I understood it, that the Board of Review should have required his attendance before it. There is, in my view, no substance in the point. This was an appeal by the taxpayer against these additional assessments and the onus of proving they were excessive lay on the taxpayer. If he did not consider it necessary himself to give evidence in discharge of that onus that was entirely a matter for him. As Isaacs Ag. C.J. of the Australian High Court pointed out in *Federal Commissioner of Taxation* v. *Clarke* [2] at p. 251:—

"The justice of that burden cannot be disputed. From the nature of the tax the Commissioner has, as a rule no means of ascertainment but what is learnt from the taxpayer, and the taxpayer is presumably and generally, in fact, acquainted with his own affairs. The onus may prove to be dischargeable easily or with difficulty according to the circumstances."

If the taxpayer fails to discharge it by not giving evidence himself on matters peculiarly within his knowledge or, for example, has conveniently lost his memory or his books or failed to keep proper books he must take the consequences.

There was, in my view, no substance in the other matters raised on behalf of the taxpayer.

In the result, therefore, in my judgment, the appeal must be dismissed with costs.

Ambrose J.: I have had the advantage of reading the judgments of the Acting Chief Justice and Buttrose J. and agree with their opinions and their conclusion that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Marshall & Chung; State Advocate-General.*

KAHU ILLIAS v. N.V. VEREENIGDE NEDERLANDSCHE SCHEEPVAARTMAATSCHAPPIJ

[O.C.J. (Buttrose J.) July 19, 1961]

[Singapore — Suit No. 1061 of 1959]

Damages — Workmen's Compensation — Acceptance from employers under Workmen's Compensation Ordinance — Whether debarred from further claim — Workmen's Compensation Ordinance (Cap. 157), ss.20(a) & 28(1).

The plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel. He accepted and received $12,780 as compensation from his employers under the Workmen's Compensation Ordinance in full settlement of his claim. He now commenced proceedings against the owners of the vessel in which the accident occurred. The main point for consideration for the Court was whether the plaintiff had recovered compensation from his employer within the meaning of section 20(a) of the said Ordinance.

Held: as the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional the plaintiff cannot now recover damages from the defendants.

Case referred to:—

(1) *Elligott* v. *Nebbett* [1948] 1 All E.R. 514.

WORKMEN'S COMPENSATION.

A. Muthuswamy for the plaintiff.

J. Grimberg for the respondents.

Cur. Adv. Vult.

Buttrose J.: The short point for decision in this case is whether, in respect of the injuries which he sustained, the plaintiff has recovered compensation from his employer within the meaning of section 20(a) of the Workmen's Compensation Ordinance (Chapter 157) hereinafter referred to as the Ordinance.

The plaintiff, a stevedore employed by the Singapore Harbour Board, was seriously injured when some bales of rubber fell on him while he was working in the hold of the defendants' vessel.

It is not in dispute that the plaintiff has accepted and received from the Singapore Harbour Board the maximum sum of $12,780 as compensation under the provisions of the Ordinance in full settlement of his claim. He has now taken proceedings against the defendants the owners of the vessel in which the accident occurred and who were the employers of her crew for damages for the injuries he has suffered.

The defendants contend that the plaintiff is debarred from recovering damages from them by reason of the provisions of section 20(a) of the Ordinance which reads as follows:—

"20. Where any injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Ordinance, but he shall not be entitled to recover both damages and compensation."

The effect of that section as applied to the present case is that if the plaintiff has recovered compensation from the Singapore Harbour Board, his employer, he will not be able to recover damages from the defendants for loss of wages or for pain and suffering although such matters are not included in the compensation.

The plaintiff claimed compensation from his employer and the employer recognised the claim by payment, and the plaintiff accordingly, in my view, has recovered compensation within the meaning of the Ordinance.

The case of *Elligott* v. *Nebbett* [1] turned on the construction of the corresponding section of the English Workmen's Compensation Act, 1925,

viz., section 30(1) which is substantially the same as section 20(a) of the Ordinance. In that case an injured workman received payments from his employer on the understanding that they were not to prejudice his right of action at common law against a third party in respect of his injury, and would be repayable by him in the event of his succeeding in such action, but would otherwise be treated as payments of workmen's compensation. It was held that in accepting the payments on the conditions mentioned the workman had not "recovered compensation" within section 30(1) of the English Act and so was not precluded by that subsection from recovering damages in an action against the third party. In that case the payment by the employers and the acceptance by the workman were entirely conditional. In the present case, in my opinion, the payment by the Singapore Harbour Board and the acceptance by the plaintiff were entirely unqualified and unconditional and the plaintiff cannot now recover damages from the defendants. It is to be observed that the plaintiff's acceptance of the compensation is confirmed by his solicitors' letter of the 19th November, 1957.

It was also argued, as I understood it, that because the written agreement under which the plaintiff accepted the compensation had not been recorded as provided by section 28(1) of the Ordinance, the plaintiff, although he had received the compensation had not recovered it, within the meaning of section 20(a) of the Ordinance. There is, in my view, no merit in this argument. The recording of the agreement by the Commissioner for Labour is mandatory except in cases in which it appears that it should not be so recorded by reason of the inadequacy of the amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means. None of these elements are present in this case. The amount paid was the maximum that could be claimed under the Ordinance and there was no suggestion of fraud, undue influence or other improper means.

There is no evidence before me as to whether the agreement has now been registered or not, but in any event so far as the defendants are concerned it is, in my opinion, irrelevant.

The sole question for determination is has the plaintiff recovered compensation and the answer to that question is, in my view, in the affirmative.

In these circumstances the plaintiff is, in my judgment, debarred from recovering damages from the defendants by reason of the provisions of section 20(a) of the Ordinance.

The defendants must have their costs of these proceedings.

Order accordingly.

Solicitors: *Muthu & Co.; Drew & Napier.*

COMPTROLLER OF INCOME TAX v. Q.R.S.

[A.C.J. (Wee Chong Jin J.) July 28, 1961]

[Singapore — District Court Appeal No. 14 of 1958]

Income Tax — Additional Assessments — Profits from sale of house — Whether profits from a trade or business — Calculation of profits — Principles — Income Tax Ordinance (Cap. 166), s.10(1)(a).

In this case the Comptroller of Income Tax raised four additional assessments against the taxpayer on the basis that they were profits from the sale of houses built by the taxpayer on behalf of his wife on land belonging to her which she had purchased in 1937. The taxpayer objected to these additional assessments, but the Comptroller refused to amend his additional assessments. The taxpayer appealed to the Board of Review on the ground that whatever profits that accrued to the taxpayer's wife resulting from the sale of the houses were not profits from a trade or business within the meaning of section 10(1)(a) of the Income Tax Ordinance, or alternatively that the Comptroller in arriving at the profits was wrong in valuing the land at its cost to the taxpayer's wife. The Board dismissed the appeal finding on the evidence that the taxpayer was carrying on a trade, but holding that it was just and equitable that the date for valuing the land for the purposes of assessment should be January 1, 1948. The Comptroller now appeals contending that the Board erred in law in holding that the date should be January 1, 1948. The taxpayer cross-appealed, contending that the said profits were not from a trade or business.

Held: (1) unless there is statutory provision otherwise, in calculating profits one applies normal commercial principles. There is not room in a taxing statute for just and equitable considerations;

(2) in view of the facts in this case it could not be said that the Board's finding was erroneous in point of law. The facts of this warrant a determination either way and that therefore the Board's finding cannot be upset on appeal.

Case referred to:—

(1) *Edwards* v. *Bairstow*, 36 T.C. 207.

INCOME TAX APPEAL.

G. Hill for the appellant.

Tan Boon Chiang for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: The Comptroller of Income Tax by two additional notices of assessment assessed the taxpayer for the year of assessment, 1950 to tax in the sums of $257.52 and $634.48 on the basis of further chargeable incomes of $4,219 and $5,161, respectively.

By two further notices of additional assessment, the Comptroller assessed the taxpayer to tax for the year of assessment, 1951 in the sums of $6,053.80 and $8,955.70 on the basis of further chargeable incomes of $37,119 and $34,146, respectively.

These four additional assessments were raised against the taxpayer on the basis that they were profits from the sale of houses built by the taxpayer on behalf of his wife on land belonging to the taxpayer's wife which she had purchased in the year 1937, many years before the introduction of income tax into the State.

The taxpayer objected to these four additional assessments on the ground that the basis adopted by the Comptroller in valuing the land at its cost to the taxpayer's wife was not fair and reasonable and that the land should be